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10/598,113	08/17/2006	Ian Birkby	307473	1182		
23460	7590	12/24/2008	EXAMINER			
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6731				VANDERHORST, MARIA VICTORIA		
ART UNIT		PAPER NUMBER				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/598,113	BIRKBY, IAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	M. VICTORIA VANDERHORST	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 August 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4,11-15 and 18 is/are rejected.  
 7) Claim(s) 5-10,16,17,20 and 21 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 17 August 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>06/17/2006</u> .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### **Status of Claims**

1. This communication is in response to application 10/598,113, filed on 08/17/2006. Claims 1-4, 11-15, 18 and 19 are currently pending and have been examined. Claims 1-4, 11-15, 18 and 19 have been rejected. Claims 5-10, 16, 17, 20 and 21 were not examined.

### **Claim Objections**

2. Claims 20 and 21 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 20 and 21 are a computer program claim and a product claim (i.e. computer-readable media), respectively, that refer back to previous method claims. The Office considers any claim that refers to another claim as dependent thereon, i.e. a dependent claim. Since the previous claims are method claims comprising a series of steps and Claims 20 and 21 fail to add, delete, or change any of these steps, Claims 20 and 21 fail to further limit their parent claims. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

3. Claims 5-10, 16, 17, 20, and 21 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 5-10, 16, 17, 20, and 21 not been further treated on the merits.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, by being incomplete for omitting essential step, such omission amounting to a gap between the steps. See MPEP § 2172.01.

The preamble of the claim states that the method is “for the distribution of an advertising revenue stream”. However, the only step in the method is calculating the revenue distribution. The omitted step is distribution of the advertising revenue stream (first found in Claims 9 and 10). Thus, the claim does not complete the invention.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. **As to claims 1-4, 11-15, 18 and 19** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**As to claims 1, 11 and 18,** they are rejected under 35 U.S.C. 101 because the claimed invention is directed to nonstatutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least Gottschalk v. Benson, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims **1, 11 and 18** fail to meet the above requirements because the claims fail to tie in another statutory class of invention.

**As to claims 2-4, 12-15 and 19,** they depend from claims **1, 11 and 18** and do not cure the deficiencies set forth above. Therefore, claims **2-4, 12-15 and 19** are also rejected for failing to tie in another statutory class of invention.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US. PG. Pub. 2004/0205132 (Czerwonka) in view of US. Patent No. 6,976,003 (Hamor at al).

**As to claim 1, Czerwonka discloses a method for the distribution of an advertising revenue stream derived from a media space incorporating content that is peer reviewed and advertising (Czerwonka's method allows multiple parties in different locations to create and maintain a grouping of related files and information and make a publication available to end-users over the Internet, Abstract, paragraph [0022, 0026 and 0027 ]. Further, the peer review can provide acceptance of content , paragraph [0041]),**

but Hamor does not disclose calculating revenue distributions from the advertising revenue stream to be distributed to both a provider of the content and the peer reviewer.

However, Hamor discloses calculating revenue distributions from the advertising revenue stream to be distributed to both a provider of the content and the peer reviewer (Hamor discloses a method "...for providing advertising sponsorship for content providers is described. The sponsorship derives revenue from a pool of revenue that is collected from participating sponsors... The value is determined by dividing the revenue pool by the number of impressions attributed to the content provider...", Abstract).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention was made, to incorporate Hamor's teaching into the method of Czerwonka. One would have been motivated to distribute revenue between content providers and reviewers in order to offer a quality content publication and an efficient compensation solution.

Further, Czerwonka does not disclose the revenue distribution to the content provider being influenced by a metric indicative of the popularity of the content.

However, Hamor discloses the revenue distribution to the content provider being influenced by a metric indicative of the popularity of the content (In Hamor's method the metric that is monitored is the "# of client impressions", "...Fig. 7, Col. 7:44-67, Col. 8:1-64).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention was made, to incorporate Hamor's teaching into the method of Czerwonka. One would have been motivated to utilize metrics to relate them to the popularity of the content in order to offer a cost efficient solution for advertisers, peer reviewers and customers.

**As to claim 2,** Czerwonka, and Hamor disclose a method as in claim 1 above, and further Czerwonka, and Hamor disclose a method comprising the steps of:

establishing the metric indicative of the popularity of the content based on at least one attribute associated with the content (Hamor discloses "...The host system

tracks client impressions associated with a content provider's content during client browsing...", Abstract);

monitoring the at least one attribute (In Hamor's method the attribute that is monitored is the "# of client impressions", "...Fig. 7, Col. 7:44-67, Col. 8:1-64);

establishing the value of the metric based on an output from monitoring the at least one attribute (Hamor discloses "...Each time a client accesses a GCC, the client can choose to begin a session 700 on the GCC. Once the client is logged in, the client may choose to access content on the GCC 701. Once the content is accessed, the content provider transmits content, such as a web page, to the client. During this time, the client will have either viewed or heard, or otherwise had an "impression" of the content. Thus one impression is credited to that content provider 702. Once the client makes a further determination regarding the relevancy of the content, the client may wish to interact with the content...", Fig. 7, Col. 7:44-67, Col. 8:1-64); and

Further Harmor's discloses using the value of the metric in calculating the revenue distribution ("...An example of how client activity is monitored for the purpose of revenue distribution is shown in FIG. 7. Each time a client accesses a GCC, the client can choose to begin a session 700 on the GCC. Once the client is logged in, the client may choose to access content on the GCC 701. Once the content is accessed, the content provider transmits content, such as a web page, to the client. During this time, the client will have either viewed or heard, or otherwise had an "impression" of the content. Thus one impression is credited to

that content provider 702. Once the client makes a further determination regarding the relevancy of the content, the client may wish to interact with the content. If the client determines that the content is worthy of printing, the client may instruct the host or content to perform a print function 703. If the content is printed out, the content provider is credited with a second impression 704. If the client chooses not to print, but instead e-mails the content 705, the content provider is again credited with a single impression 706. If the client saves the content 707 onto a storage medium, the content provider is credited with an impression as well 708. It is understood that any numerical value, whole or fractional, may be assigned to client activities (e.g., saving, e-mailing, printing, searching) that are related to specific content...”, Fig. 7, Col. 7:44-67, Col. 8:1-64)

As to claim 3, Czerwonka, and Hamor disclose a method as in claim 1 or 2 above, and further Czerwonka, and Hamor disclose a method comprising the steps of: establishing a predetermined association between the content and the advertising, wherein at least the calculated revenue distribution to the content provider is also influenced by the predetermined association (In Hamor's method there is an association between the number of client impressions and the content , “...The present invention further incorporates the use of functional advertising content (FAC), as well as a functional host to effectuate the advertising model. FAC can be defined as messages, promotions, coupons, discounts, hyperlinks, informative messages, software programs, browsers, media players and other

applications. The functional host is a software program that allows a client to register various "impressions" regarding viewed content, browse content, and otherwise interact with the FAC being delivered to the client...", Col. 2:64-67, Col. 3:1-6).

As to claim 4, Czerwonka, and Hamor disclose a method as in claim 3 above, and further Czerwonka, and Hamor disclose comprising the step of using information provided by the peer reviewer of the content in forming the predetermined association (In Czerwonka's method the peer review can provide acceptance of content, paragraph [0041], and further Hamor discloses "...determining a revenue pool comprised of an amount paid by a plurality of advertisers, sponsors and other revenue sources prior to receiving or considering client impressions related to content; b) transmitting over an electronic network a functional host with client control features to a client requesting content data; c) transmitting over an electronic network at least one content page from at least one content provider, along with the functional host, to the client; d) receiving client impressions related to the at least one content page through the functional host; and e) calculating content provider revenue that is comprised of the revenue pool divided by the total number of client impressions counted ...", claim 1 of Hamor's reference) .

9. Claims 11-15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US. Patent No. 6,976,003 (Hamor at al) in view of US. PG. Pub. 2004/0205132 (Czerwonka) .

**As to claims 11 and 18,** Hamor discloses distribution of an advertising revenue stream derived from a media space incorporating content and advertising (Hamor discloses “...A method comprising: a) determining a revenue pool comprised of an amount paid by a plurality of advertisers, sponsors and other revenue sources prior to receiving or considering client impressions related to content; b) transmitting over an electronic network a functional host with client control features to a client requesting content data; c) transmitting over an electronic network at least one content page from at least one content provider, along with the functional host, to the client; d) receiving client impressions related to the at least one content page through the functional host; and e) calculating content provider revenue that is comprised of the revenue pool divided by the total number of client impressions counted on the at least one content page from at least one content provider, wherein the revenue pool is not dependent on client impressions...”, claim 1 if Hamor’s reference), the method comprising the steps of:

establishing a plurality of revenue pools from the advertising revenue stream (“...The method of claim 1, wherein revenue pool comprises the total number of advertisement spots, multiplied by the price per advertisement...”, claim 15 of Hamor’s reference); and

associating the content with at least one of the revenue pools, wherein the provider of content receives a revenue distribution which is at least partially dependent on the value of at least one revenue pool to which the content is associated (“...distributing revenue from the revenue pool, wherein each content provider's share would be equal to the revenue pool divided by the total number of impressions received for all content providers and then multiplied by the total number of impressions received by each content provider, and the revenue pool is not dependent on client impressions...”, claim 17 of Hamor's reference).

Further, Hamor does not disclose comprising the step of publishing the value of each revenue pool.

However, Official Notice is taken that publishing the value of information involve the same activities regardless of the content. For example some of the activities to web publish information are, convert files with information into HTML, edit and format the content. These activities are essentially the same whether the content to be published on the internet is a policy manual of a company, a speech, or a patent application etc.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention was made, to incorporate the commonly practice of web publishing information into the method of a host system providing advertising and content of Hamor. One would have been motivated to utilize the web to publish data in order to share information with all the stakeholders.

**As to claim 12,** Hamor discloses a method as in claim 11 above, and further Hamor discloses wherein the revenue pools are defined by at least one characteristic which is capable of distinguishing content in the media space (“a determining a revenue pool comprised of an amount paid by a plurality of advertisers, sponsors and other revenue sources prior to receiving or considering client impressions related to content...”, claim 17 of Hamor’s reference).

**As to claims 13 and 19,** Hamor discloses a methods as in claims 12 and 18 above, and further Hamor discloses a method wherein the content is associated with the revenue pools by assigning the at least one characteristic to the content (In Harmor’s method , “...The present invention further incorporates the use of functional advertising content (FAC), as well as a functional host to effectuate the advertising model. FAC can be defined as messages, promotions, coupons, discounts, hyperlinks, informative messages, software programs, browsers, media players and other applications. The functional host is a software program that allows a client to register various "impressions" regarding viewed content, browse content, and otherwise interact with the FAC being delivered to the client...”, Col. 2:64-67, Col. 3:1-6).

But Hamor does not disclose that the content is peer reviewed.

However, Czerwonka discloses that the content is peer reviewed (paragraph [0041]).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention was made, to incorporate Czerwonka's teaching into the method of Hamor. One would have been motivated to assign one characteristic to the content such as number of client impressions and associate it with the peer reviewer approval process in order to offer an efficient compensation solution.

**As to claim 14,** Hamor and Czerwonka discloses a methods as in claim 13 above, and further Hamor discloses comprising the step of distributing revenue from the at least one revenue pool (“...d) distributing revenue from the revenue pool, wherein each content provider's share would be equal to the revenue pool divided by the total number of impressions received for all content providers and then multiplied by the total number of impressions received by each content provider, and the revenue pool is not dependent on client impressions...”, claim 17 of Hamor’s reference. Examiner’s notes that it is not patentable distinguishing giving distributing revenue to the content provided and giving distributing revenue to the peer reviewer, the activity is the same).

**As to claim 15,** Hamor and Czerwonka disclose a methods as in any one of claim 11 to 13 above, but Hamor does not disclose comprising the step of publishing the value of each revenue pool.

However, Official Notice is taken that publishing the value of information involve the same activities regardless of the content. For example some of the activities to web publish information are, convert files with information into HTML, edit and format the content. These activities are essentially the same whether the content to be published on the internet is a policy manual of a company, a speech, or a patent application, etc.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention was made, to incorporate the commonly practice of web publishing information into the method of a host system providing advertising and content of Hamor. One would have been motivated to utilize the web to publish data in order to share information with all the stakeholders.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA VANDERHORST whose telephone number is (571)270-3604. The examiner can normally be reached on Monday through Friday 7:30 AM to 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on 571 272 6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. V./  
Examiner, Art Unit 3688  
December 20, 2008

/James W Myhre/  
Supervisory Patent Examiner, Art Unit 3688